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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT MANAZANARES,

Defendant and Appellant.

B270745

(Los Angeles County  
Super. Ct. No. BA210817)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
William C. Ryan, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah Hill and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

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Albert Manazanares appeals from the trial court's order denying his petition for recall of his indeterminate life sentence pursuant to Proposition 36. The trial court found he was ineligible for resentencing because he was armed during the commission of the crime of custodial possession of a weapon. (Pen. Code, § 4502, subd. (a).)<sup>1</sup>

Manazanares contends he was not armed during the commission of his offense and therefore is not barred from relief under Proposition 36. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On November 12, 2000, while housed in Men's Central Jail, Manazanares underwent a full body cavity search conducted by sheriff's deputies. During the search, Manazanares removed a seven-inch, sharpened metal shank wrapped in cloth from his rectal area and discarded it at the feet of the deputies. Manazanares was convicted of custodial possession of a weapon (§ 4502, subd. (a)), his third "strike," and was sentenced to a term of 25 years to life in state prison. (§§ 667, 1170.12.)

On March 7, 2016, Manazanares filed a petition to recall his sentence under the Three Strikes Reform Act of 2012, added by Proposition 36 and approved by the voters on November 6, 2012, which permits an inmate serving an indeterminate life sentence under the "Three Strikes" law for a nonviolent, nonserious felony to seek a new, lesser sentence unless resentencing would pose an unreasonable risk to public safety. (§ 1170.126, subds. (b), (e), (f).) The people opposed the petition, arguing Manazanares was ineligible for relief because he was armed with a deadly weapon during the commission of his possession offense. (§§ 1170.126, 4502, subd. (a).) The trial court agreed, and denied the petition. Manazanares timely appealed.

### **DISCUSSION**

Manazanares contends he is eligible for resentencing. We disagree. Section 1170.126 was added as part of the Three Strikes Reform Act. (Voter Information Guide, text of Prop. 36, § 6, pp. 109-110.) Among its stated purposes, as explained to voters, was to require "life sentences only when a defendant's current conviction is for a violent

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<sup>1</sup> All further statutory references will be to the Penal Code.

or serious crime” and to ensure “that repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession will receive twice the normal sentence instead of a life sentence.” (*Id.*, § 1, p. 105.) In accordance with these goals, section 1170.126 permits an inmate serving an indeterminate life sentence under the previous version of the Three Strikes law to petition for recall of the sentence to a term that would have been imposed under the revised law.

But subdivision (e)(2) of section 1170.126 provides that an inmate is ineligible for resentencing if the current sentence was imposed for an offense described in subdivision (e)(2)(C) of section 667. (§ 1170.126, subd. (e)(2); *People v. Hicks* (2014) 231 Cal.App.4th 275, 282.)<sup>2</sup> Among the offenses described in subdivision (e)(2)(C) of section 667 is any offense during the commission of which “the defendant used a firearm [or] was armed with a firearm or deadly weapon.” (§ 667, subd. (e)(2)(C)(iii).)<sup>3</sup>

Here, based upon officer testimony, the trial court found that Manazanares had been armed with a deadly weapon during the commission of his current offense.

Manazanares argues that having been armed during the commission of his offense (custodial possession of a deadly weapon) does not disqualify him from resentencing under Proposition 36 because being armed is an element of the offense. Therefore, he argues, the deadly weapon exclusion applies only when being armed is “tethered” to another offense. The argument is without merit. Where “the record shows that a defendant convicted of possession of a [deadly weapon] was armed with the [deadly weapon] during the commission of the offense, the armed with a [deadly weapon] exclusion applies and the defendant is not entitled to resentencing . . . under” Proposition

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<sup>2</sup> Subdivision (e)(2) of section 1170.126 provides in pertinent part that an inmate is eligible for resentencing if the “inmate’s current sentence was not imposed for any of the offenses appearing in clauses (i) to (iii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (e) of Section 1170.12 . . . .”

<sup>3</sup> Subdivision (e)(2)(C)(iii) of section 667 disqualifies a defendant from relief under Proposition 36 if “[d]uring the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.”

36. (*People v. Brimmer* (2014) 230 Cal.App.4th 782, 797; accord *People v. Hicks, supra*, 231 Cal.App.4th at pp. 283-284; *People v. Elder* (2014) 227 Cal.App.4th 1308, 1312-1314, 1317; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1030; *People v. White* (2014) 223 Cal.App.4th 512, 525.) Here, Manazanares was armed with a metal shank during the commission of his custodial possession offense, which sufficed for the deadly weapon exclusion to apply.

Manazanares argues our interpretation of the exclusion as applied to a possession offense renders the exclusion superfluous, as all deadly weapon possession involves being armed. The argument is without merit. “A defendant possesses a weapon when it is under his dominion and control.” (*People v. Pena* (1999) 74 Cal.App.4th 1078, 1083.) “A defendant is *armed* if the defendant has the specified weapon available for use, either offensively or defensively.” (*People v. Bland* (1995) 10 Cal.4th 991, 997.) “A firearm [or deadly weapon] can be under a person’s dominion and control without it being available for use. For example, suppose a parolee’s residence (in which only he lives) is searched and a firearm is found next to his bed. The parolee is in possession of the firearm, because it is under his dominion and control. If he is not home at the time, however, he is not armed with the firearm, because it is not readily available to him for offensive or defensive use. Accordingly, possessing a [deadly weapon] does not necessarily constitute being armed with a [deadly weapon].” (*People v. Osuna, supra*, 225 Cal.App.4th at p. 1030.)

Under the circumstances of this case, Manazanares both possessed a deadly weapon and had it readily available for use during his full body search. He was thus “armed” within the meaning of Proposition 36, which renders him ineligible for resentencing. The trial court correctly denied his recall petition.

**DISPOSITION**

The order dismissing Manazanares's petition is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

WE CONCUR:

ROTHSCHILD, P. J.

LUI, J.